

**FILED**  
at Santa Fe, NM

UNITED STATES DISTRICT COURT

AUG 25 2006

DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN  
CLERK

IN RE: SUBPOENAS *DUCES TECUM*  
ISSUED BY THE U.S. DISTRICT  
COURT FOR THE DISTRICT OF  
NEW MEXICO IN:

Case No. MC-06-20 MV

JOANNE SIEGEL and LAURA  
SIEGEL LARSON,

Case Nos. CV 04-8400; 04-8776  
(Consolidated for Discovery  
Purposes)

Plaintiffs,

Action Pending in the U.S. District  
Court for the Central District of  
California

v.

WARNER BROS. ENTERTAINMENT  
INC., et al.,

Defendants.

DECLARATION OF MARC TOBEROFF, ESQ. IN  
OPPOSITION TO DEFENDANTS'  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS  
PURSUANT TO SUBPOENA DUCES TECUM,  
FOR CONTEMPT, AND FOR ATTORNEYS FEES

6

**DECLARATION OF MARC TOBEROFF**

I, Marc Toberoff, declare as follows:

1. I am an attorney at the Law Offices of Marc Toberoff, PLC, counsel of record for Mark Warren Peary and Jean Adele Peavy (the "Shuster Heirs" or the "Shusters"). I am a member in good standing of the State Bar of California and submit this declaration in opposition to defendants' ("Defendants") Motion to Compel Production of Documents, for Contempt and for Attorneys' Fees. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Mark Warren Peary ("Warren") and Jean Adele Peavy ("Jean") are the sister and nephew, respectively, of Joseph Shuster ("Shuster"), now deceased, the illustrator of the original "Superman" comic books. Warren is Jean's son and the recently appointed executor of Shuster's estate.

3. I represent Joanne and Laura Siegel (the "Siegels" or "Plaintiffs"), widow and daughter of Jerry Siegel, the co-author of the world renowned comic book hero, "Superman," and the sole author of "Superboy." I represent them in declaratory relief actions in the Central District Court of the State of California regarding their proper exercise of their right under section 304(c) of the 1976 United States Copyright Act, 17 U.S.C. § 304(c), to recapture Jerry Siegel's original copyrights in "Superman" and "Superboy" by serving statutory notices on April 3, 1997 and March 8, 2002, respectively terminating Siegel's prior grant(s) of "Superman" and "Superboy" to Defendants' predecessor(s).

4. A true and correct copy of Judge Ronald S. Lew's March 23, 2006 Order granting Joanne and Laura Siegel's motion for partial summary judgment in the "Superboy" action is attached hereto as Exhibit "A."

5. On May 13, 2005, I caused Defendants' attorneys herein to be served with the Siegels' first set of requests to DC for production of documents.

6. On May 13, 2005, I caused Defendants' attorneys to be served with the Siegels' first set of requests to WB for production of documents.

7. On June 13, 2005, Defendants DC and WB served my law offices with responses to the Siegels' respective requests for production.

8. In response to the Siegels' first set of requests for production, DC made a portion of their non-privileged documents available for copying on August 9, 2005. A true and correct copy of the letter from Weinberger to me dated August 9, 2005 informing me of this is attached hereto as Exhibit "B."

9. Defendant DC did not serve a privilege log on my law offices until April 7, 2006. A true and correct copy of the letter from Weinberger to me dated April 7, 2006 enclosing DC's privilege log is attached hereto as Exhibit "C."

10. In response to the Siegels' first set of requests for production served on WB on May 13, 2005, WB first made documents available to Plaintiffs for copying on June 2, 2006. A true and correct copy of the letter dated June 2, 2006 from Defendants' attorneys informing me of this is attached hereto as Exhibit "D."

11. WB subsequently served their privilege log on my law offices on June 27, 2006. A true and correct copy of the letter dated June 27, 2006 from Defendants' attorneys to me enclosing their privilege log is attached hereto as Exhibit "E."

12. In April, 2006, soon after the Shusters had been served with Defendants' subpoenas ("Subpoenas"), I discussed with Defendants' lead trial counsel Roger Zissu ("Zissu"), the possibility of holding the Shusters' depositions in Los Angeles the week of June 21, 2006 when they were expected to attend the premiere of Defendants' movie, "Superman Returns" (the "Premiere"). As the parties were also seeking to schedule Joanne and Laura Siegel's depositions at this time, this suggestion was met with Mr. Zissu's approval. I was also at this time in contact with Warner Bros.' Senior Litigation counsel, Wayne Smith ("Smith"), arranging the details of the Shusters' attendance at the Premiere. Mr. Smith was equally receptive to the taking of the Shusters' depositions

while they were in Los Angeles. The parties' discovery plan resulted in the depositions of the Shuster being taken "off calendar" by Defendants until at least the week of June 21, 2006 when the Shusters were expected in Los Angeles to attend the Premiere. At this time I also instructed the Shusters to locate documents responsive to Defendants' Subpoenas.

13. On May 3, 2006, Defendants' counsel Patrick Perkins ("Perkins") sent me an email requesting available dates for the Shusters' deposition. I answered his email the same day, reiterating my suggestion that the depositions be held around June 21, 2006 in Los Angeles, during the week of the Premiere as this would be convenient for the parties. Perkins rejected this proposal via an email sent May 31, 2006. I reemphasized my request via email the same day.

14. Perkins rejected my repeated requests to have the Shusters' depositions held in Los Angeles during the Premiere. From May 3, 2006 until June 19, 2006, when Perkins claimed there was no possibility of taking the Shuster depositions during their visit to Los Angeles for the Premiere. Perkins never offered any alternative dates to hold the Shusters' depositions. On June 19, 2006, Perkins sent an email claiming there was no possibility of taking the Shuster depositions during their visit to Los Angeles.

15. The Shusters produced documents responsive to the Subpoenas and relevant to the Siegel Litigations on July 14, 2006. A true and correct copy of the July 14, 2006 cover letter accompanying the document production is attached hereto as Exhibit "F."

16. At Perkins' request, the Shusters and I readily agreed to hold their depositions in Santa Fe on August 8 and 9, 2006, respectively.

17. On August 1, 2006 Defendants filed their Motion to Compel Production of Documents in the U.S. District Court, District of New Mexico. Perkins informed me of the filing via email August 2, 2006. At this time he also cancelled the Shusters' August 8

and 9, 2006 depositions. The Shusters remain ready to have their depositions taken. A true and correct copy of Perkins August 2, 2006 email is attached hereto as Exhibit "G."

18. The Shusters, in an effort to amicably resolve the discovery dispute, renewed their search for responsive documents. I furnished to Perkins a supplemental production of what they found on August 11, 2006. This production included both the Shuster's Notice of Termination as well as probate documents for Joseph Shuster, including his will. A small privilege log was also submitted at this time. I am informed and believe the Shusters have turned over all responsive documents. True and correct copies of the Shusters Objections to Defendants' Subpoena dated August 11, 2006 and the Shuster's privilege log are attached hereto as composite Exhibit "H."


19. On August 14, 2006, the Shusters, on their own initiative, produced a fully executed copy of a partially executed agreement produced on August 11, 2006 in further compliance with the Subpoenas. A true and correct copy of the August 14, 2006 cover letter accompanying the document production is attached hereto as Exhibit "I."

20. In response to Perkins' subsequent objection to the particular wording of the Shusters' August 11, 2006 written objections, they amended their objections. A true and correct copy of the Shusters' Amended Objections to Defendants' Subpoena dated August 16, 2006 is attached hereto as Exhibit "J."

21. A true and correct copy of the August 1, 1992 letter signed by Paul Levitz, Frank Shuster, and Jean Shuster Peavy is attached hereto as Exhibit "K."

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on August 25, 2006 in Los Angeles, California.

  
\_\_\_\_\_  
Marc Toberoff

# EXHIBIT A

Priority ☒  
Send ☒  
Enter ☒  
Closed ☐  
JS-5/JS-6 ☐  
JS-2/JS-3 ☐  
Scan Only ☐

ENTERED  
CLERK, U.S. DISTRICT COURT  
MAR 24 2006  
CENTRAL DISTRICT OF CALIFORNIA  
BY [Signature] DEPUTY

DOCKETED ON CM  
MAR 24 2006  
BY                      003

1

1 Warner, Inc.'s Motion for Summary Judgment came on regularly  
2 for hearing on March 20, 2006. This Court has considered  
3 all of the papers and argument submitted on the matter and  
4 **NOW FINDS AND RULES AS FOLLOWS:**

5  
6 As a preliminary matter, this Court **GRANTS** Plaintiffs'  
7 and Defendants' requests for Judicial Notice pursuant to  
8 Fed. R. Evid. 201.

9  
10 This copyright dispute arises out of facts stemming  
11 back to 1938 and earlier, and including two previous cases  
12 in 1947 and 1973. Plaintiffs in this case are Joanne  
13 Siegel, widow of Jerome Siegel,<sup>1</sup> and their daughter, Laura  
14 Siegel Larson. Jerome Siegel and Joseph Shuster are the  
15 creators of Superman. Jerome Siegel is the originator,  
16 creator of Superboy with Joseph Shuster providing much of  
17 the illustration. Defendants in this case are Time Warner  
18 Inc., the parent company of DC Comics ("Defendants"). DC  
19 Comics predecessor in interest was National Comics  
20 Publications, Inc. ("National") and its predecessor in  
21 interest was Detective Comics ("Detective").

22  
23 In 1947, Jerome Siegel and Joseph Shuster sued National  
24 in the New York Supreme Court for the County of Westchester  
25

---

26 <sup>1</sup> Jerome Siegel passed away on January 28, 1996.



1 ("the state court action") seeking a determination that  
2 their March 1, 1938 contract was void. Additionally, the  
3 state court action sought to determine who owned the rights  
4 to Superman and to Superboy.

5  
6 On November 1, 1947 Judge Addison Young, the official  
7 referee in the state court action, rendered a detailed  
8 interlocutory judgment. Then on April 12, 1948, Judge Young  
9 signed a detailed findings of fact and conclusions of law.  
10 He found that Jerome Siegel was the originator and sole  
11 owner of the comic strip feature Superboy with the sole and  
12 exclusive right to create, sell, and distribute the comic  
13 strip under the title Superboy.

14  
15 On May 19, 1948 the parties entered into a stipulation  
16 to settle and on May 21, 1948, the Court entered a consent  
17 judgment, vacating in all respects the interlocutory  
18 judgment. The stipulation provided for a payment of  
19 approximately \$94,000.00 by National in exchange for  
20 ownership in both Superman and Superboy.

21  
22 In 1973, Siegel and Shuster again sued National in the  
23 Southern District of New York seeking declaratory relief  
24 that they were entitled to the copyright renewal rights of  
25 Superman. National counterclaimed for a finding of  
26 declaratory relief in its favor. District Judge Lasker

1 granted National's Motion for Summary Judgement dismissing  
2 the complaint and finding "National to be the owner of the  
3 copyright of all Superman strips during the renewal term."  
4 Siegel & Shuster v. National Periodical Publications, Inc.,  
5 364 F. Supp. 1032, 1033 (S.D.N.Y. 1973).

6  
7 Judge Lasker noted that the findings of the State  
8 Supreme Court of Westchester were binding on the district  
9 court. Id. (citing to Vernitron Corp. v Benjamin, 440 F.2d  
10 105, 108 (2d Cir. 1971)). Judge Lasker made a clear  
11 distinction between (1) the findings of fact of the state  
12 court and (2) the stipulated settlement and resulting  
13 consent judgment. Siegel & Shuster, 508 F.2d at 913.

14  
15 Siegel and Shuster appealed and the Second Circuit  
16 affirmed finding that the district court "properly decided  
17 that the state court judgment of May 21, 1948 effectively  
18 estopped the plaintiffs from relitigating the issue of  
19 ownership of the renewal copyright." Siegel & Shuster v.  
20 National Periodical Publications, Inc. et al., 509 F.2d 909,  
21 912-13 (2d Cir. 1974).

22  
23 In November 2002, Jerome Siegel's widow and daughter  
24 served notices of termination for the Superboy copyrights  
25 pursuant to Section 304(c). Today, Plaintiffs seek a  
26 determination that they effectively terminated Defendants'

1 renewal rights in Superboy pursuant to 17 U.S.C. § 304(c) on  
2 November 17, 2004.

3  
4 17 U.S.C. § 304(c) provides for termination of  
5 transfers and licenses covering the extended renewal term.  
6 Under the 1901 Copyright Act, protection was divided into  
7 two separate consecutive terms of twenty-eight years: the  
8 "initial term" and the "renewal term." But as most  
9 authors/creators were required to contract away both the  
10 initial and renewal periods at the same time, they were  
11 effectively denied the protection Congress sought to  
12 provide.

13  
14 As a result, on January 1, 1978, the 1976 Copyright Act  
15 took effect significantly enhancing the rights of authors  
16 and their heirs. 19 U.S.C. § 101, et seq. The 1976 Act  
17 extended the renewal term from 28 to 47 years, for works in  
18 their renewal term when the 1976 Act took effect. Along with  
19 adding 19 years to the renewal term period, the 1976 Act  
20 coupled the extension with a new right of authors and their  
21 heirs to recapture the renewal of the copyright in works by  
22 terminating any prior grant of the work executed before  
23 January 1, 1978. 17 U.S.C. § 304(c). It is under this  
24 provision that Plaintiffs have sought to recapture Jerome  
25 Siegel's ownership in the Superboy copyrights.

26

1 Fundamental to the arguments presented by both  
2 Plaintiffs and Defendants is the effect of the interlocutory  
3 judgment issued by Judge Young on November 21, 1947 and the  
4 detailed findings of fact and conclusions of law he issued  
5 on April 21, 1948.

6  
7 Currently, Defendants attempt to relitigate issues  
8 determined in the 1947 state court case. Defendants argue  
9 vigorously that only the consent judgment has any preclusive  
10 effect and that Judge Young's findings of fact have no  
11 effect whatsoever on this litigation. Defendants take this  
12 position because their desired outcome is consistently in  
13 direct conflict with the findings issued by Judge Young.  
14 Specifically, Judge Young's findings contradict Defendants'  
15 assertions regarding (1) the ownership of Superboy; (2)  
16 whether Superboy is simply a derivative work of Superman;  
17 and (3) whether Superboy was a "work for hire" solely owned  
18 by Defendants' predecessors in interest, National and  
19 Detective.

20  
21 Defendants' current argument that Judge Young's  
22 findings are not binding contradicts the position taken by  
23 their predecessors in interest in the 1973 litigation and  
24 the 1974 Second Circuit appeal regarding Superman. In  
25 applying the doctrine of res judicata in favor of  
26 Defendants, Judge Lasker precluded, and the Second Circuit

1 affirmed, Plaintiffs from litigating the issue of ownership  
2 of the renewal period of the Superman copyrights.

3  
4 Having relied on Judge Young's findings for previous  
5 favorable determinations regarding Superman, Defendants now  
6 take the inconsistent position that this Court is not bound  
7 by the state court findings, as they relate to Superboy.  
8 Defendants attempt to raise genuine issues of material fact,  
9 where the facts were clearly determined by Judge Young after  
10 the opportunity to take evidence and hear testimony on that  
11 evidence from the parties directly involved in creating this  
12 relationship.

13  
14 Contrary to Defendants' assertions now, both the  
15 Southern District of New York and the Second Circuit looked  
16 directly to, even citing to, Judge Young's findings of fact.  
17 This Court holds that it is consistent to continue this  
18 position and will look to Judge Young's findings as binding  
19 where relevant. Here, while the consent judgment vacated  
20 the interlocutory judgment in its entirety, this Court in  
21 keeping a consistent position with the previous litigation  
22 holds that Judge Young's findings of fact have preclusive  
23 res judicata and collateral estoppel effect on this Court.

24  
25 This Court now finds that Plaintiffs have availed  
26 themselves of their legal right to recapture the Superboy

1 copyrights pursuant to 17 U.S.C. § 304(c) and 37 C.F.R.  
2 210.10. As such, this Court **GRANTS** Plaintiffs' Motion for  
3 Partial Summary Judgment.

4  
5 Defendants argued that Plaintiffs' Superboy notices of  
6 termination are ineffective, because the 1976 Act specifies  
7 that only grants relating to "any copyright subsisting in  
8 either its first or renewal term on January 1, 1978" are  
9 subject to Section 304(c).

10  
11 However, Plaintiffs presented uncontroverted evidence  
12 supporting that the Superboy copyright was in fact  
13 subsisting in its renewal term as of the 1976 Act's  
14 effective date. Specifically, Plaintiffs pointed to the  
15 fact that the copyright in the serialized magazine, *More Fun*  
16 *Comics*, No. 101 was secured on November 23, 1944 with  
17 registration number B653651 and then renewed on July 17,  
18 1972, twenty-eight years later, by National under renewal  
19 registration number R532582. In the 1947 state court  
20 action, Judge Young specifically determined that Detective  
21 Comics published the Superboy comic strip based upon the  
22 idea, plan, and conception of Siegel, in a magazine entitled  
23 *More Fun Comics*.

24  
25 Alternatively, Defendants argued that, even if the  
26 copyrights were subsisting in their renewal period as of

1 January 1, 1978, Plaintiffs' notices of termination are  
2 ineffective as the submissions are not eligible for  
3 termination as "works made for hire." The Ninth Circuit has  
4 summarized the work for hire doctrine as follows:

5       When one person engages another, whether as  
6       employee or as an independent contractor, to  
7       produce a work of an artistic nature, . . . in the  
8       absence of an express contractual reservation of  
9       the copyright in the artist, the presumption arises  
10      that the mutual intent of the parties is that the  
11      title to the copyright shall be in the person at  
12      whose instance and expense the work is done.

13 Self-Realization Fellowship Church v. Ananda Church of Self-  
14 Realization, 206 F.3d 1322, 1326 (9th Cir. 2000) (quoting  
15 Lin-Brook Builders Hardware v. Gertler, 352 F.2d 298, 300  
16 (9th Cir. 1965)).

17  
18       Defendants' argument that Superboy was a work for hire  
19 fails, as this conclusion directly conflicts with Judge  
20 Young's findings in the state court action. Specifically,  
21 Judge Young found that

22  
23 (1) Under Siegel and Shuster's September 12, 1938 agreement  
24 with Detective Comics, they were to provide Detective  
25 with the right of first refusal and a six week  
26

1 consideration period.<sup>2</sup>

2  
3 (2) On November 30, 1938, Siegel submitted in a writing  
4 mailed to Detective for its consideration a synopsis,  
5 summary of idea, conception, plan for a new comic known  
6 as Superboy pursuant to the September 12, 1938  
7 agreement.<sup>3</sup>

8  
9 (3) Detective declined to indicate its election to publish  
10 Superboy within the six weeks and on December 2, 1938  
11 Detective by letter to Siegel elected not to publish  
12 Superboy.<sup>4</sup>

13  
14 While not mentioning the term "work for hire," Judge  
15 Young's findings naturally implicate the question. Here a  
16 presumption of "work for hire" cannot be found in  
17 Defendants' favor, since not only did Judge Taylor find that  
18 Defendants elected not to publish Superboy, but he also

19  
20  
21 <sup>2</sup> Judge Young found that Siegel independently created his  
22 original Superboy Synopsis and Superboy Story under the terms of the  
23 September 12, 1938 agreement between Siegel and his publisher, which  
24 permitted him to create new comic strip concepts and stories outside  
the five Siegel and Shuster were currently producing for Detective.  
The agreement only allowed Detective a right of first refusal to  
accept/reject within six weeks of a new submission. [Decl. Toberoff  
Exh. B, Pg. 32 FOF 156-159, 160-162].

25 <sup>3</sup> [Decl. Toberoff Exh. B, Pg. 32 FOF #155, 156].

26 <sup>4</sup> [Decl. Toberoff Exh. B, Pg. 32 FOF #158, 159].



1 found that Plaintiff Siegel and, not National, was the sole  
2 owner of the Superboy property. This finding will not  
3 support a contrary conclusion that the "mutual intent of the  
4 parties" was to have ownership of Superboy always be in  
5 Detective or National, and therefore, the Defendants in this  
6 action.

7  
8 Alternatively, Defendants argued that Siegel created  
9 Superboy as a derivative work based upon a pre-existing  
10 original work whose copyright was owned by the hiring party,  
11 and is therefore "produced at the instance and subject to  
12 the right and control of the employing party." See Playboy  
13 Enters. Inc. v. Dumas, 53 F.3d 549, 554 (2d Cir. 1995).

14  
15 Here again, Defendants' argument that Superboy is  
16 simply a "derivative work" of Superman is unpersuasive. The  
17 1947 state court action specifically addressed the ownership  
18 rights to Superman and Superboy separately. Defendants'  
19 attempt to recast Superboy as a "derivative work" or "work  
20 for hire," stands in stark contrast to Judge Young's  
21 conclusion that Detective/National was "perpetually enjoined  
22 and restrained from creating, publishing, selling, or  
23 distributing" Superboy, based on the fact that Siegel was  
24 the sole and exclusive owner.<sup>5</sup> Defendants' argument also

25  
26 <sup>5</sup> [Decl. Toberoff Exh. B, Pg. 5-6 COL # 25].

1 contradicts the fact that Siegel subsequently transferred  
2 his exclusive interest in Superboy to National in the May  
3 19, 1948 stipulated settlement. Had Superboy been nothing  
4 more than a derivative work, Siegel would have owned no  
5 interest in the Superboy property to transfer.

6  
7 Having determined that Section 304(c) applies to this  
8 dispute, this Court also finds that Plaintiffs have  
9 established that no genuine issue of material fact exists  
10 regarding the effectiveness of their termination of the  
11 Superboy copyrights.

12  
13 Pursuant to 17 U.S.C. 304(c) and 37 C.F.R. §  
14 201.10(b)(1)(iv), Plaintiffs' termination notices list the  
15 following pre-1978 grants of Superboy: (1) the May 19, 1948  
16 Agreement (stipulated settlement); and (2) the December 23,  
17 1975 Agreement (where relevant, though this agreement does  
18 not mention Superboy). No post-1978 grants of rights  
19 regarding Superboy exist.

20  
21 Defendants argued that Plaintiffs failed to comply with  
22 the termination regulations, because the termination notices  
23 only list the May 19, 1948 stipulated settlement, but did  
24 not list the May 21, 1948 "Final Consent Agreement."

25  
26 This Court finds that no genuine issue exists that the

1 operative grant of "Superboy" by Jerome Siegel was the May  
2 19, 1948 stipulated settlement and that the consent judgment  
3 merely followed the parties' stipulation and was entered by  
4 the Court two days later. Additionally, Regulation  
5 201.10(b)(1)(iv) merely requires a "brief statement  
6 reasonably identifying the grant to which the notice of  
7 termination applies." In fact, Regulation 201.10(e)  
8 provides that

9  
10 harmless errors in a notice that do not materially  
11 affect the adequacy of the information required to  
12 serve the purposes of . . . section 304(c) . . .  
13 shall not render the notice invalid.  
14

15 Here, by listing the May 19, 1948 stipulated  
16 settlement, the termination notices provide a brief  
17 statement reasonably identifying the grant in question.  
18 Even, if including the May 21, 1948 consent judgment would  
19 have provided additional notice, its absence in no way  
20 materially affected the adequacy of Plaintiffs' notice.  
21

22 As Jerome Siegel's widow, Joanne Siegel owns 50% of her  
23 husband's termination interest. 17 U.S.C. § 304(c)(2)(A).  
24 As one of his two surviving children, Laura Siegel Larson  
25 owns 25% of Siegel's termination interest. 17 U.S.C. §  
26 304(c)(2)(A). Together Plaintiffs own more than one-half of

1 Siegel's termination interest required to effectively  
2 terminate Siegel's grant pursuant to 17 U.S.C. §304(c)(1).  
3

4 Defendants argued that Plaintiffs' Superboy termination  
5 notices were ineffective, because Joseph Shuster has a co-  
6 ownership/joint works interest in Superboy not asserted in  
7 the termination notices. Defendants argued that since  
8 Shuster has a one-half interest in Superboy, Plaintiffs only  
9 have Siegel's one-half interest, not the "more than one-  
10 half" needed to terminate pursuant to Section 304(c). They  
11 point to the fact that More Fun (Superboy's comic) was  
12 published with the byline "Jerry Siegel and Joe Shuster."  
13

14 But, while Shuster was the illustrator attached to  
15 Superboy, the 1947 state court action determined that Siegel  
16 was the sole originator and owner of Superboy and Siegel  
17 alone possessed exclusive ownership rights. Ownership  
18 rights, which he and not Shuster, subsequently transferred  
19 in the stipulated settlement. No facts support a contrary  
20 finding.  
21

22 Finally, this Court finds that Plaintiffs timely and  
23 properly recorded with the Copyright Office and served on  
24 Defendants the notices of termination for the Superboy  
25 copyrights as required by 17 U.S.C. § 304(c) and 37 C.F.R. §  
26 201.10.

1 Therefore, this Court finds that Plaintiffs effectively  
2 terminated Jerome Siegel's grants of the Superboy  
3 copyrights, recapturing them on November 17, 2004.  
4 To the extent that Defendants' Motion for Summary Judgment  
5 makes a contrary request, this Court **DENIES** Defendants'  
6 motion.

7  
8 Also, as to Defendants, this Court **DENIES** Defendants'  
9 request for a finding that the WB television show,  
10 *Smallville*, does not infringe on Plaintiffs' recaptured  
11 copyrights. Defendants' argument reaches a quick and broad  
12 conclusion that Plaintiffs' copyrights in Superboy protect  
13 virtually nothing more than the idea of a "youth with super  
14 powers."

15  
16 In order to establish copyright infringement,  
17 Plaintiffs must first establish ownership and then must show  
18 the two following factors: (1) the defendant had access to  
19 the copyrighted material; and (2) the defendant's material  
20 is substantially similar to the copyrighted material. Three  
21 Boys Music Corp. v. Bolton, 212 F.3d 477, 481 (9th Cir.  
22 2000).

23  
24 Here, no genuine issue of material fact exists as to  
25 Plaintiffs' ownership in the Superboy copyrights, nor is  
26 there an issue that Defendants' had access to the Superboy

1 property. But, because substantial similarity is  
2 customarily an extremely close question of fact, summary  
3 judgment has traditionally been frowned upon in copyright  
4 litigation. Hoehling v. Univ. City Studios, Inc., 618 F.2d  
5 972, 977 (2d. Cir. 1980).

6  
7 Here, the specific question as to whether the  
8 television show *Smallville* infringes on Plaintiffs' Superboy  
9 copyrights requires a detailed factual comparison of each  
10 property's content characteristics, much of which are  
11 disputed in Plaintiffs' and Defendants' papers. Plaintiffs  
12 immediately start drawing comparisons between the storylines  
13 of *Smallville* and the Superboy comic strip, including the  
14 cast of characters' names, personas, roles in the storyline,  
15 their independent storylines, the location, etc. Enough  
16 facts are presented, where this Court, contrary to  
17 Defendants' request, could find that the main character in  
18 *Smallville* is in fact Superboy.<sup>6</sup>

19  
20 Therefore, this Court in construing the submitted  
21 evidence in the light most favorable to the non-moving  
22 party, Plaintiffs, genuine issues of material fact exist as  
23 to whether Defendants' television show *Smallville* is  
24 infringing Plaintiffs' copyrights.

25  
26 <sup>6</sup> In the Superboy comic strip a billboard on the side of a rural  
country road announces, "Welcome to Smallville! Home of Superboy."

1 Therefore, Defendants' Motion for Summary Judgment is  
2 DENIED.

3  
4 This Court adopts Plaintiff's Findings of Fact and  
5 Conclusions of Law with modifications.  
6

7  
8 IT IS SO ORDERED.

RONALD S.W. LEW

9  
10 RONALD S.W. LEW  
United States District Judge

11  
12 DATED: March 23, 2006  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

# EXHIBIT B



**FROSS ZELNICK LEHRMAN & ZISSU, P.C.**

RONALD J. LEHRMAN  
DAVID WEINBERG  
STEPHEN ZISSU  
ROBERT L. ZISSU  
MARIE V. ZISSU  
HOWARD M. ZISSU  
DAVID M. ZISSU  
EVAN M. ZISSU  
JANET L. ZISSU  
PETER J. ZISSU  
LAWRENCE E. ZISSU  
BARBARA A. ZISSU  
LISA ZISSU  
MARK D. ZISSU  
VIRGINIA M. ZISSU  
ANDREW G. ZISSU  
GEORGE M. ZISSU  
J. ALLISON ZISSU  
JOHN P. ZISSU  
NANCY A. ZISSU

**800 UNITED NATIONS PLAZA  
AT FIRST AVENUE & 48<sup>TH</sup> STREET  
NEW YORK, N. Y. 10017**

**TELEPHONE: (212) 613-6000  
FACSIMILE: (212) 613-6001  
E-MAIL: jweinberger@frosszelnick.com**

MICHAEL I. DAVID  
OFFICIAL COUNSEL  
JAMES H. GILBERTSON  
JOHN S. LEE  
JOSEPH M. FROST  
PHILIP T. SHANNON  
MICHAEL D. FROST  
JAMES H. GILBERTSON

ROBERT A. GILBERTSON  
TAMAR M. GILBERTSON  
LYDIA T. GILBERTSON  
MICHAEL GILBERTSON  
EVAN GILBERTSON  
CARLOS GILBERTSON  
JAMES H. GILBERTSON  
JOHN S. LEE  
JOSEPH M. FROST  
DAVID M. ZISSU  
MICHAEL D. FROST  
TAMAR M. GILBERTSON  
LYDIA T. GILBERTSON  
MICHAEL GILBERTSON  
EVAN GILBERTSON  
CARLOS GILBERTSON  
JAMES H. GILBERTSON  
JOHN S. LEE  
JOSEPH M. FROST  
DAVID M. ZISSU  
MICHAEL D. FROST  
TAMAR M. GILBERTSON  
LYDIA T. GILBERTSON  
MICHAEL GILBERTSON  
EVAN GILBERTSON  
CARLOS GILBERTSON  
JAMES H. GILBERTSON  
JOHN S. LEE  
JOSEPH M. FROST  
DAVID M. ZISSU  
MICHAEL D. FROST

August 9, 2005

**BY FACSIMILE**

Marc Toboroff, Esq.  
Law Offices of Marc Toboroff, P.C.  
1999 Avenue of the Stars, Suite 1540  
Los Angeles, California 90067

Re: *Siegel v. Warner Bros.*, Case Nos. 04-CV-8400, 04-CV-8776 DDP (ANx)  
(C.D. Cal) (Our Ref. No. DCC USA TC-0425344)

Dear Marc:

Further to my August 2, 2005 letter, we are ready to make a supplemental production of DC's non-confidential documents, numbered DCC 00000001-00004102. Please let us know at your earliest convenience how you would like to arrange for copies to be made. If you like, we can use a local vendor (at your clients' cost, of course) and arrange for documents to be sent directly from there to your offices.

Also, I enclose a draft protective order for discussion. Upon agreement, we are ready to commence DC's rolling production of confidential documents.

Very truly yours,

  
James D. Weinberger

cc: Michael Bergman, Esq. (by facsimile)  
David L. Burg, Esq. (by facsimile)  
Patrick T. Perkins, Esq. (by email)  
Roger L. Zissu, Esq.

# EXHIBIT C

**FROSS ZELNICK LEHRMAN & ZISSU, P.C.**

RONALD J. LEHRMAN  
DAVID WEILB III  
STEPHEN BIGGER  
ROGER L. ZISSU  
MARIE V. PRISCELL  
RICHARD Z. LEHY  
DAVID W. EHRLICH  
RUSAN UPTON BOVELLARD  
JANEY L. HOFFMAN  
PETER J. SILVERMAN  
LAWRENCE ELI APOLSON  
BARBARA A. SOLOMON  
MARIO AISTA  
MARK S. ENGELMANN  
NADINE H. JACOBSON  
ANDREW H. FROSTBERG  
CRAIG S. MOROS  
J. ALLISON DYCKLAND  
JOHN P. MARGIOTTA  
MARIA A. SCUNIO  
LYDIA T. COHEN  
CARLOS BUCARELLA

888 UNITED NATIONS PLAZA  
AT FIRST AVENUE & 48<sup>TH</sup> STREET  
NEW YORK, N. Y. 10017

TELEPHONE: (212) 813-5900  
FACSIMILE: (212) 813-5901  
E-MAIL: [tziz@frosszelnick.com](mailto:tziz@frosszelnick.com)

MICHAEL I. DAVIS  
SPECIAL COUNSEL

JAMES B. SILVERSTEIN  
JOYCE M. FERRARO  
PHILIP T. SHANNON  
MICHELLE P. FORMAN  
ANGELA KIM  
ROBERT A. BECKER  
COUNSEL

TAMAR RIV. GERSHBERG  
MICHAEL SHIAPPETTA  
EVAN SHAPIRO  
NANCY S. SIOGREN  
EON HILSEN  
JAMES B. WEINBERGER  
DAVID J. GREENBAUM  
DAVID DONAHUE  
MELISSA A. ANTONESCHIA  
NANCY E. BARBARA  
LAURA POPP-ROSENBERG  
KARA A. DUTLE  
JOHN M. GALLAGHER  
MELISSA A. MURDOLOHN  
JUSTIN DEASLER  
CHARLES T. J. WEIRLL III  
ALLISON J. SIBBY  
MARILYN F. KELLY  
CHRISTOPHER M. SINDLE  
TODD MARTIN  
AIMER ALLEN  
CAROLINE S. BOENH

\*ADMITTED IN NORTH CAROLINA

April 7, 2006

**BY FEDERAL EXPRESS**

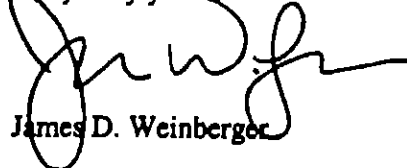
Marc Toberoff, Esq.  
Law Offices of Marc Toberoff, P.C.  
1999 Avenue of the Stars, Suite 1540  
Los Angeles, California 90067

Re: *Superman Litigation*, Case Nos. 04-CV-8400, 04-CV-8776 RSWL (RZx)  
(C.D. Cal) (Our Ref. No. DCC USA TC-0425344)

Dear Marc:

Enclosed please find DC Comics' privilege log. I understand that the Warner log and production will follow shortly. Please advise when we can get Plaintiffs' privilege log.

Very truly yours,

  
James D. Weinberger

Enclosure

cc: Michael Bergman, Esq. (by email, w/o encl.)  
Anjani Mandavia, Esq. (by email, w/o encl.)  
Adam Hagen, Esq. (by email, w/o encl.)  
Patrick T. Perkins, Esq. (by email, w/o encl.)  
Roger L. Zissu, Esq. (w/o encl.)

# EXHIBIT D

Jun-06-06 10:48am From:WEISSMANN WOLFF ETAL

310-560-7101

T-146 P.02/02 F-103

WWBCGE

VIA FAX (310)246-3101  
AND US MAIL

June 2, 2006

Marc Toberoff, Esq.  
Law Offices of Marc Toberoff, P.C.  
2049 Century Park East, Suite 2720  
Los Angeles, CA 90067

Adam Hagen  
ahagen@wwlp.com  
310.560.3366

Re: Siegel v. Warner Bros., Case Nos. 04-CV-8400,  
04-CV-8776 DDP (ANX) (C.D. Cal.) (Our File No. 02231 0811)

Dear Marc:

Warner Bros. documents, numbered WB 000001 - WB 010248, are available for your inspection and copying. Please let us know what arrangements you would like to have made for inspection and copying.

Very truly yours,



Adam Hagen

AH:ac

cc: Wayne Smith  
Roger Zissu  
Patrick Perkins  
Michael Bergman  
James Weinberger

WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP  
9665 WILSHIRE BLVD NINTH FLOOR, BEVERLY HILLS, CA 90212 T: 310.868.7888 F: 310.560.7191 WWW.WWLP.COM  
LAWYERS

321231\_1.DOC

Received Jun-06-06 08:27am

From:310 560 7101

To-

Page 002

# EXHIBIT E

WWBCGE

VIA FAX (w/o Encls) (310)246-3101  
AND US MAIL

June 27, 2006

Marc Toberoff, Esq.  
Law Offices of Marc Toberoff, P.C.  
2049 Century Park East, Suite 2720  
Los Angeles, CA 90067

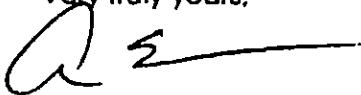
Adam Hagen  
ahagen@wwllp.com  
310.860.3366

Re: *Siegel v. Warner Bros.*  
Case Nos. 04-CV-8400, 04-CV-8776 DDP (ANx) (C.D. Cal.)

Dear Marc:

Enclosed please find Warner Bros.'s privilege log.

Very truly yours,



Adam Hagen

AH:ac

Enclosure

# EXHIBIT F



**LAW OFFICES OF MARC TOBEROFF**

A PROFESSIONAL CORPORATION

MARC TOBEROFF\*  
NICHOLAS C. WILLIAMSON  
\* ALSO ADMITTED IN NEW YORK

2049 CENTURY PARK EAST, SUITE 2720  
LOS ANGELES, CALIFORNIA 90067

TELEPHONE  
(310) 246-3333

FACSIMILE  
(310) 246-3101

July 14, 2006

Via U.S. Mail & Facsimile (845) 265-2819

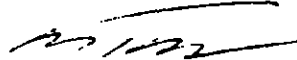
Patrick Perkins, Esq.  
Perkins Law Office, PC  
1711 Route 9D  
Cold Spring, New York 10516

Re: Jean Shuster Peavy and Mark Peary

Dear Patrick:

Enclosed please find the following documents from Jean Shuster Peavy and Mark Peary numbered 1-8 responsive to Defendants' April 10, 2006 deposition subpoenas. We expressly reserve the right to supplement this production.

Very truly yours,



Marc Toberoff

cc: Michael Bergman, Esq.  
James D. Weinberger, Esq.

# EXHIBIT G

**Marc Toberoff**

---

**From:** Patrick Perkins [pperkins@ptplaw.com]  
**Sent:** Wednesday, August 02, 2006 8:23 AM  
**To:** 'Marc Toberoff'; 'Nick Williamson'  
**Cc:** 'Roger Zissu'; 'James Weinberger'; 'Michael Bergman'; 'Anjani Mandavia'  
**Subject:** Motion to Compel and for Contempt Filed in the District of New Mexico  
**Attachments:** 8-1-06 Memo in support of motion to compel (00004266).PDF; 8-1-06 Motion to Compel as filed (00004265).PDF; \_AVG certification\_.txt

Dear Marc and Nick:

Attached hereto are defendants' Motion to Compel, For Contempt, and for Attorneys' Fees, and the Memorandum in support thereof filed yesterday in the U.S. District Court for the District of New Mexico. I apologize this was not provided to you yesterday as I had a miscommunication with Santa Fe counsel.

In light of the fact that the issue of your clients' documents is unresolved, the depositions of your clients currently scheduled for August 7 and 8 are postponed pending resolution of the document issue.

Regards,

Patrick T. Perkins  
Perkins Law Office, PC  
1711 Route 9D  
Cold Spring, New York 10516  
Tel: (845) 265-2820  
Fax: (845) 265-2819  
e-mail: [pperkins@ptplaw.com](mailto:pperkins@ptplaw.com)

CONFIDENTIALITY NOTICE: The information in this electronic mail transmission is confidential, intended only for the named recipient(s), and may contain information that is privileged, attorney work product, or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender at (845) 265-2820 and delete this email message from your computer.

8/25/2006

# EXHIBIT H

1 Marc Toberoff (CA State Bar No. 188547)  
2 Nicholas C. Williamson (CA State Bar No. 231124)  
3 LAW OFFICES OF MARC TOBEROFF, PLC  
4 2049 Century Park East, Suite 2720  
5 Los Angeles, CA 90067  
6 Telephone: (310) 246-3333  
7 Facsimile: (310) 246-3101

8 Attorneys for Plaintiffs and Counterclaim Defendants  
9 Joanne Siegel and Laura Siegel Larson

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JOANNE SIEGEL, an individual; and  
13 LAURA SIEGEL LARSON, an  
14 individual,

15 Plaintiffs,

16 vs.

17 WARNER BROS.  
18 ENTERTAINMENT INC., a  
19 corporation; TIME WARNER INC., a  
20 corporation; DC COMICS, a general  
21 partnership; and DOES 1-10,

22 Defendants

23 DC COMICS,

24 Plaintiffs

25 vs.

26 JOANNE SIEGEL, an individual; and  
27 LAURA SIEGEL LARSON, an  
28 individual,

Counterclaim Defendants

Civil Case No. 04-8776 RSWL (RZx)

**MARK WARREN PEARY  
AND JEAN SHUSTER PEAVY'S  
OBJECTIONS TO  
TO DEFENDANTS' SUBPOENA**

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 Mark Warren Peary and Jean Shuster Peavy (the "Shusters"), pursuant to  
3 the provisions of Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure,  
4 make the following objections to the subpoena duces tecum that was served on  
5 them on April 12, 2006:

6 **Document Category No. 1:**

7 All documents Concerning Superman and/or Superboy.

8 **Response to Document Category No. 1:**

9 The Shusters object to this request on the grounds that it is vague and  
10 ambiguous. The Shusters further object to this request on the grounds that it is  
11 overbroad, burdensome and oppressive. The Shusters further object to this  
12 request to the extent it seeks documents or communications protected by the  
13 attorney/client privilege. Subject to and without waiving the foregoing  
14 objections, the Shusters will produce all non-privileged documents they are able  
15 to determine are responsive to this request.

16 **Document Category No. 2:**

17 All documents Concerning any negotiations by or with Defendants,  
18 Plaintiffs, Dennis Larson, Michael Siegel, and/or the Shuster Representatives.

19 **Response to Document Category No. 2:**

20 The Shusters object to this request on the grounds that it is vague and  
21 ambiguous, including without limitation, the phrase "any negotiations  
22 Concerning Superman and/or Superboy." The Shusters further object to this  
23 request on the grounds that it is overbroad, burdensome and oppressive. The  
24 Shusters further object to this request to the extent it seeks documents or  
25 communications protected by the attorney/client privilege. Subject to and  
26 without waiving the foregoing objections, the Shusters will produce all non-  
27 privileged documents they are able to determine are responsive to this request.

1 **Document Category No. 3:**

2 All documents Concerning any agreements with Plaintiffs, Dennis  
3 Larson, Michael Siegel, and/or the Shuster Representatives Concerning  
4 Superman and/or Superboy, including but not limited to, any agreements  
5 Concerning any ownership interest in and/or revenue from Superman and/or  
6 Superboy.

7 **Response to Document Category No. 3:**

8 The Shusters object to this request on the grounds that it is vague and  
9 ambiguous, including without limitation, the phrase "any agreements  
10 Concerning any ownership interest in and/or revenue from Superman and/or  
11 Superboy." The Shusters further object to this request on the grounds that it is  
12 overbroad, burdensome and oppressive. The Shusters further object to this  
13 request to the extent it seeks documents or communications protected by the  
14 attorney/client privilege. Subject to and without waiving the foregoing  
15 objections, the Shusters will produce all non-privileged documents they are able  
16 to determine are responsive to this request.

17 **Document Category No. 4:**

18 All documents Concerning any valuation of any current or potential  
19 ownership interest in Superman and/or Superboy.

20 **Response to Document Category No. 4:**

21 The Shusters object to this request on the grounds that it is vague and  
22 ambiguous, including without limitation, the phrase "any valuation of any  
23 current or potential ownership interest." The Shusters further object to this  
24 request on the grounds that it is overbroad, burdensome and oppressive. The  
25 Shusters further object to this request to the extent it seeks documents or  
26 communications protected by the attorney/client privilege. Subject to and  
27 without waiving the foregoing objections, the Shusters will produce all non-  
28 privileged documents they are able to determine are responsive to this request.

1 **Document Category No. 5:**

2 All documents evidencing any correspondence with any third person  
3 Concerning Superman and/or Superboy.

4 **Response to Document Category No. 5:**

5 The Shusters object to this request on the grounds that it is vague and  
6 ambiguous. The Shusters further object to this request on the grounds that it is  
7 overbroad, burdensome and oppressive. The Shusters further object to this  
8 request to the extent it seeks documents or communications protected by the  
9 attorney/client privilege. Subject to and without waiving the foregoing  
10 objections, the Shusters will produce all non-privileged documents they are able  
11 to determine are responsive to this request.

12 **Document Category No. 6:**


13 All documents Concerning the letter of agreement dated August 1, 1992,  
14 signed by Paul Levitz, Frank Shuster and Jean Shuster Peavy.

15 **Response to Document Category No. 6:**

16 The Shusters object to this request on the grounds that it is overbroad,  
17 burdensome and oppressive. The Shusters further object to this request to the  
18 extent it seeks documents or communications protected by the attorney/client  
19 privilege. Subject to and without waiving the foregoing objections, the Shusters  
20 will produce all non-privileged documents they are able to determine are  
21 responsive to this request.

22  
23 Dated: August 11, 2006

LAW OFFICES OF MARC TOBEROFF, PLC

24  
25 

26 Marc Toberoff  
27 Attorneys for MARK WARREN PEARY and  
28 JEAN SHUSTER PEAVY



**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 2049 Century Park East, Suite 2720, Los Angeles, California 90067.

On August 11, 2006, I served the attached document described as **MARK WARREN PEARY AND JEAN SHUSTER PEAVY'S OBJECTIONS TO DEFENDANTS' SUBPOENA** on all interested parties in this action by placing \_\_\_\_ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Roger L. Zissu  
James D. Weinberger  
FROSS ZELNICK LEHRMAN & ZISSU, P.C.  
866 United Nations Plaza  
New York, New York 10017

Patrick T. Perkins  
PERKINS LAW OFFICE, P.C.  
1711 Route 9D  
Cold Spring, NY 10516

Michael Bergman  
WEISSMANN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP  
9665 Wilshire Boulevard, Ninth Floor  
Beverly Hills, CA 90212

☐ :**BY FACSIMILE:**

As follows: I caused the transmission of the above named document to the fax number set forth above, or on the attached service list.

☒ :**BY MAIL:**

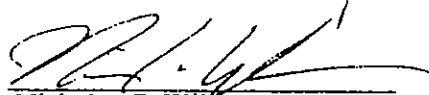
As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

:(STATE) - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ :(FEDERAL) - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 EXECUTED on August 11, 2006, in Los Angeles, California.

3   
4 Nicholas C. Williamson

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## PRIVILEGE LOG

Log #	Date of Document	Identity of Recipient(s)	Identity of Autho(s)r	Document Type	Privilege Claim	Present Location
1	11/23/2001	Mark Peary & Jean Peavy	Atty Marc Toberoff	Letter	Atty/Client	Plaintiffs' Counsel
2	6/13/2003	Atty John Pettker	Atty Marc Toberoff	Letter	Atty/Client	Plaintiffs' Counsel
3	7/8/2003	Atty Marc Toberoff	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
4	8/25/2003	Mark Peary	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
5	9/15/2003	Mark Peary	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
6	10/10/2003	Mark Peary & Jean Peavy	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
7	10/27/2003	Mark Peary	Atty Marc Toberoff	Letter	Atty/Client	Plaintiffs' Counsel
8	8/25/2005	Mark Peary	Atty John Pettker	Letter	Atty/Client	Plaintiffs' Counsel
9	4/11/2006	Atty Marc Toberoff	Jean Peavy	Letter	Atty/Client	Plaintiffs' Counsel
10	6/9/2006	Atty Marc Toberoff	Mark Peary	E-mail	Atty/Client	Plaintiffs' Counsel

11	6/9/2006	Atty Marc Toberoff	Mark Peary	E-mail	Atty/Client	Plaintiffs' Counsel
12	7/11/2006	Atty Marc Toberoff	Mark Peary	Letter	Atty/Client	Plaintiffs' Counsel
13	00/00/00	Atty Marc Toberoff	Mark Peary	Letter	Atty/Client	Plaintiffs' Counsel

# EXHIBIT I

**LAW OFFICES OF MARC TOBEROFF**

A PROFESSIONAL CORPORATION

MARC TOBEROFF\*  
NICHOLAS C. WILLIAMSON

\* ALSO ADMITTED IN NEW YORK

2049 CENTURY PARK EAST, SUITE 2720  
LOS ANGELES, CALIFORNIA 90067

TELEPHONE  
(310) 246-3333

FACSIMILE  
(310) 246-3101

August 14, 2006

Via Facsimile (845) 265-2819

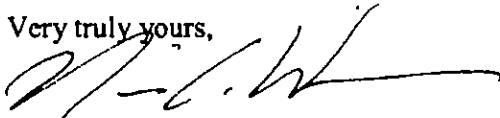
Patrick Perkins, Esq.  
Perkins Law Office, P.C.  
1711 Route 9D  
Cold Spring, New York 10516

Re: Warren Peary and Jean Peavy Document Production

Dear Patrick:

Enclosed please find an additional document produced by Warren Peary and Jean Peavy  
bates numbered 134- 137.

Very truly yours,



Nicholas C. Williamson

# EXHIBIT J

1 Marc Toberoff (CA State Bar No. 188547)  
2 Nicholas C. Williamson (CA State Bar No. 231124)  
3 LAW OFFICES OF MARC TOBEROFF, PLC  
2049 Century Park East, Suite 2720  
4 Los Angeles, CA 90067  
Telephone: (310) 246-3333  
Facsimile: (310) 246-3101

5 Attorneys for Plaintiffs and Counterclaim Defendants  
6 Joanne Siegel and Laura Siegel Larson

7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 JOANNE SIEGEL, an individual; and  
10 LAURA SIEGEL LARSON, an  
individual,

11 Plaintiffs,

12 vs.

13 WARNER BROS.  
14 ENTERTAINMENT INC., a  
15 corporation; TIME WARNER INC., a  
16 corporation; DC COMICS, a general  
partnership; and DOES 1-10,

17 Defendants  
18

Civil Case No. 04-8776 RSWL (RZx)

**MARK WARREN PEARY  
AND JEAN SHUSTER PEAVY'S  
AMENDED OBJECTIONS TO  
DEFENDANTS' SUBPOENA**

19  
20 DC COMICS,

21  
22 Plaintiffs

23 vs.

24 JOANNE SIEGEL, an individual; and  
25 LAURA SIEGEL LARSON, an  
26 individual,

27 Counterclaim Defendants  
28



1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 Mark Warren Peary and Jean Shuster Peavy (the "Shusters"), pursuant to  
3 the provisions of Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure,  
4 make the following amended objections to the subpoena duces tecum that was  
5 served on them on April 12, 2006:

6 **Document Category No. 1:**

7 All documents Concerning Superman and/or Superboy.

8 **Response to Document Category No. 1:**

9 The Shusters object to this request on the grounds that it is vague and  
10 ambiguous. The Shusters further object to this request to the extent it seeks  
11 documents or communications protected by the attorney/client privilege.  
12 Subject to and without waiving the foregoing objections, the Shusters will  
13 produce all non-privileged documents responsive to this request.

14 **Document Category No. 2:**

15 All documents Concerning any negotiations by or with Defendants,  
16 Plaintiffs, Dennis Larson, Michael Siegel, and/or the Shuster Representatives.

17 **Response to Document Category No. 2:**

18 The Shusters object to this request on the grounds that it is vague and  
19 ambiguous, including without limitation, the phrase "any negotiations  
20 Concerning Superman and/or Superboy." The Shusters further object to this  
21 request to the extent it seeks documents or communications protected by the  
22 attorney/client privilege. Subject to and without waiving the foregoing  
23 objections, the Shusters will produce all non-privileged documents responsive  
24 to this request.

25 **Document Category No. 3:**

26 All documents Concerning any agreements with Plaintiffs, Dennis  
27 Larson, Michael Siegel, and/or the Shuster Representatives Concerning  
28 Superman and/or Superboy, including but not limited to, any agreements

1 Concerning any ownership interest in and/or revenue from Superman and/or  
2 Superboy.

3 **Response to Document Category No. 3:**

4 The Shusters object to this request on the grounds that it is vague and  
5 ambiguous, including without limitation, the phrase "any agreements  
6 Concerning any ownership interest in and/or revenue from Superman and/or  
7 Superboy." The Shusters further object to this request to the extent it seeks  
8 documents or communications protected by the attorney/client privilege.  
9 Subject to and without waiving the foregoing objections, the Shusters will  
10 produce all non-privileged documents responsive to this request.

11 **Document Category No. 4:**

12 All documents Concerning any valuation of any current or potential  
13 ownership interest in Superman and/or Superboy.

14 **Response to Document Category No. 4:**

15 The Shusters object to this request on the grounds that it is vague and  
16 ambiguous, including without limitation, the phrase "any valuation of any  
17 current or potential ownership interest." The Shusters further object to this  
18 request to the extent it seeks documents or communications protected by the  
19 attorney/client privilege. Subject to and without waiving the foregoing  
20 objections, the Shusters will produce all non-privileged documents responsive  
21 to this request.

22 **Document Category No. 5:**

23 All documents evidencing any correspondence with any third person  
24 Concerning Superman and/or Superboy.

25 **Response to Document Category No. 5:**

26 The Shusters object to this request on the grounds that it is vague and  
27 ambiguous. The Shusters further object to this request to the extent it seeks  
28 documents or communications protected by the attorney/client privilege.

1 Subject to and without waiving the foregoing objections, the Shusters will  
2 produce all non-privileged documents responsive to this request.

3 **Document Category No. 6:**

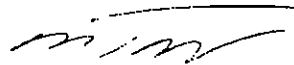
4 All documents Concerning the letter of agreement dated August 1, 1992,  
5 signed by Paul Levitz, Frank Shuster and Jean Shuster Peavy.

6 **Response to Document Category No. 6:**

7 The Shusters further object to this request to the extent it seeks  
8 documents or communications protected by the attorney/client privilege.  
9 Subject to and without waiving the foregoing objections, the Shusters will  
10 produce all non-privileged documents responsive to this request.

11  
12 Dated: August 16, 2006

LAW OFFICES OF MARC TOBEROFF, PLC

13  
14 

15 Marc Toberoff  
16 Attorneys for MARK WARREN PEARY and  
17 JEAN SHUSTER PEAVY  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is: 2049 Century Park East, Suite 2720, Los Angeles, California 90067.

On August 16, 2006, I served the attached document described as **MARK WARREN PEARY AND JEAN SHUSTER PEAVY'S AMENDED OBJECTIONS TO DEFENDANTS' SUBPOENA** on all interested parties in this action by placing \_\_\_\_ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

James D. Weinberger  
FROSS ZELNICK LEHRMAN & ZISSU, P.C.  
866 United Nations Plaza  
New York, NY 10017  
Facsimile No. 212-813-5901

Patrick T. Perkins  
PERKINS LAW OFFICE, P.C.  
1711 Route 9D  
Cold Spring, NY 10516  
Facsimile No. 845-265-2819

Michael Bergman  
WEISSMAN WOLFF BERGMAN COLEMAN GRODIN & EVALL LLP  
9665 Wilshire Boulevard, Ninth Floor  
Beverly Hills, CA 90212  
Facsimile No. 310-550-7191

☒ :BY MAIL:


As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

:(STATE) - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ :(FEDERAL) - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on August 16, 2006, in Los Angeles, California.



Alexander M. Merino

# EXHIBIT K

DC COMICS INC.  
1325 Avenue of the Americas  
New York, New York 10019  
(212) 636-5555  
FAX (212) 636-5401



Paul Levitz, Executive Vice President & Publisher

Dated as of August 1, 1992

Mr. Frank Shuster  
98-120 Queens Blvd., Apt. 4K  
Rego Park, NY 11374

Ms. Jean Shuster Peavy  
316 Horton Lane, NW  
Albuquerque, NM 87114

Dear Mr. Shuster and Ms. Peavy:

This is to confirm our agreement to pay you, collectively, a total of \$25,000 a year, payable to Jean Shuster Peavy, commencing as of August 1, 1992, for as long as either one of you is alive. Such amounts shall be payable in accordance with Warner Communication Inc.'s customary payroll practices and shall be subject to all applicable withholding taxes. If Jean Shuster Peavy shall predecease Frank Shuster, then the foregoing payments shall be made to Frank Shuster for as long as he shall live.

We ask you to confirm by your signatures below that this agreement fully settles all claims to any payments or other rights or remedies which you may have under any other agreement or otherwise, whether now or hereafter existing regarding any copyrights, trademarks, or other property right in any and all work created in whole or in part by your brother, Joseph Shuster, or any works based thereon. In any event, you now grant to us any such rights and release us, our licensees and all others acting with our permission, and covenant not to assert any claim of right, by suit or otherwise, with respect to the above, now and forever.

If, despite the terms of this agreement, either of you assert any such claim of right, for any reason, you agree to refund to us, upon the making of any such assertion, all amounts previously paid to you hereunder, and we will have no obligation to make any further payments under this agreement. We also reserve all of our other rights, remedies and defenses in such an event.

If after full consideration of the foregoing, you accept and agree to all of the above, please so indicate by signing below where indicated.


Very truly yours,

DC Comics

By:

  
Paul Levitz

ACCEPTED AND AGREED TO:

  
Frank Shuster

Dated: 10/2/92

  
Jean Shuster Peavy

Dated: 10/2/92

**CERTIFICATE OF SERVICE**

I certify that on the 25 day of August, 2006, true and correct copies of

1. MARK PEARY AND JEAN ADELE PEAVY'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA DUCES TECUM, FOR CONTEMPT, AND FOR ATTORNEYS FEES
2. DECLARATION OF MARC TOBEROFF, ESQ. IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS PURSUANT TO SUBPOENA DUCES TECUM, FOR CONTEMPT, AND FOR ATTORNEYS FEES

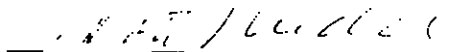
were served by regular US Mail postage prepaid to the following individuals:

Benjamin Allison  
SUTIN THAYER & BROWNE, P.C.  
Post Office Box 2187  
Santa Fe, NM 87504

Patrick T. Perkins  
PERKINS LAW OFFICE, P.C.  
1711 Route 9D  
Cold Spring, NY 10516

*Counsel for Movants*

JAY GOODMAN, ATTORNEY AT LAW, P.C.

BY:   
D. Scott Riedel, Esq.